# M E M O R A N D U M

**DATE:** July 12, 2007

**TO:** City Council Members

**FROM:** Russell Weeks

**RE:** Briefing: Proposed Ordinance Prohibiting Targeted Residential Picketing within 100 Feet of a Residence's Property Line

**CC:** Cindy Gust-Jenson, Sam Guevara, Lyn Creswell, Ed Rutan, Chris Burbank, Boyd Ferguson, Jennifer Bruno

Nothing in this memorandum is a legal opinion rendered by City Council staff. Its intent is a discussion of policy.

This memorandum pertains to a proposed ordinance that would prohibit the targeted picketing of a residence within 100 feet of the property line of that residence. The City Council has scheduled a briefing on the proposed ordinance during the July 17 work session and tentatively has placed the item on the agenda for formal consideration.

The proposed ordinance stems largely from concerns raised by the University of Utah about demonstrations outside the homes of university employees whose work has involved the use of animals for research. However, similar ordinances have been adopted in other areas of the United States for a variety of reasons, perhaps most notably demonstrations outside the homes of people who work in clinics that provide abortions.

## OPTIONS

- Adopt the proposed ordinance.
- Do not adopt the proposed ordinance.
- Amend the proposed ordinance.

## POTENTIAL MOTIONS

- I move that the City Council adopt the ordinance enacting Section 11.12.120, Salt Lake City Code, relating to targeted residential picketing.

- I move that the City Council consider the next item on the agenda.

- I move that the City Council adopt the ordinance enacting Section 11.12.120, Salt Lake City Code, relating to targeted residential picketing with the following amendment(s):

    - The "100 feet" in the definition be to "200 feet" so part (b) of the definition reads "takes place within 200 feet of the property line of that

residence." (This option was suggested in written discussion of an ordinance in Rancho Palos Verdes, California.

- The "100 feet" in the definition be to "300 feet" so part (b) of the definition reads "takes place within 300 feet of the property line of that residence." (This option was part of the adopted ordinance in Rancho Palos Verdes, California.) [Both options are closest in concept to the proposed Salt Lake City ordinance.]

- No person shall willfully make or cause to be made any loud and raucous noise at or within (100 feet, 200 feet, 300 feet) of any residence in the city which is intended to harass, threaten or intimidate any person living therein. (This option is part of the Rancho Palos Verdes, California, ordinance.)

## KEY POINTS

- The proposed ordinance would enact a new section (11.12.120) in the Salt Lake City Code chapter that defines and regulates offenses against public order.
- The proposed ordinance says in part, "It shall be unlawful for any person, acting alone or in concert with others, to engage in targeted residential picketing in Salt Lake City."
- The proposed ordinance defines "targeted residential picketing" as "picketing that (a) is specifically directed or focused towards a residence, or one or more occupants of a residence, and (b) takes place within 100 feet of the property line of that residence."
- The proposed ordinance is similar to ordinances adopted by other municipalities in the nation.
- The U.S. Supreme Court in 1988 upheld an ordinance like it.

## ISSUES/QUESTIONS FOR CONSIDERATION

- The proposed ordinance says that prohibiting targeted picketing within 100 feet of a residence "properly balances two competing interests" – the right of residents to privacy, including being free from being a captive audience to unwanted speech, and the right of picketers to have reasonable access to their intended audience.

- Are the two competing interests so diametrically opposed that ultimately one must choose between them?

- Who is the intended audience of those who would picket a residence?

- Limited City Council staff research indicates that prohibitions against targeted residential picketing range from an apparent complete citywide prohibition in the Minneapolis suburb of New Brighton, Minnesota to prohibitions "on or before or about the residence or dwelling of any individual" to prohibitions that include distances such as 100, 200 and 300 feet away from a residence targeted for picketing.

## BACKGROUND/DISCUSSION

The Administration has forwarded the proposed ordinance for City Council consideration after meetings earlier this year between representatives of the University of Utah, City Council Members and the Administration.

The intent of the ordinance is to protect the rights of Salt Lake City residents "to enjoy, in their homes and neighborhoods, a feeling of well-being, tranquility, and privacy, and enjoy freedom from being a captive audience to unwanted speech in their homes," according to the Administration's transmittal letter. The transmittal also says, "Individuals have the opportunity to exercise their rights of free speech without resorting to targeted residential picketing."

University officials contacted City Council members and the Mayor's office to discuss a series of incidents that have occurred at the homes of University of Utah faculty members and researchers between fall 2005 and April 2007. All the individuals are "residents of Salt Lake City whose work involves federally approved and heavily regulated animal research."[1] University officials contend that the demonstrations in front of homes have subjected the residents to "a campaign of intimidation and harassment."

It should be noted that on at least one occasion the group received a permit to demonstrate on a public sidewalk in the Avenues. It should be noted that the permit says in one section, "A permit issued by the Salt Lake Valley Health Department is required, if the noise will exceed specified decibel limits" of the Health Department's Regulation No. 21 (Noise Control), that the City also has incorporated into the *City Code*. In addition, the permit application says, "You group must adhere to the Salt Lake City Free Expression Activity Guidelines attached to the application. Violent acts or abusing language will not be tolerated. Your permit may be revoked it there are any violations of the guidelines."

As noted earlier, the City Attorney's Office has prepared the proposed ordinance to balance "two competing interests" – the right of residents to privacy, including being free from being a captive audience to unwanted speech, and the right of picketers to have reasonable access to an intended audience.

The basis of the proposed ordinance is a 1988 U.S. Supreme Court decision in which the court upheld a Brookfield, Wisconsin, ordinance that made it "'unlawful for any person to engage in picketing before or about the residence or dwelling of any individual,' and declaring that the primary purpose of the ban is to 'protect and preserve the home' through assurance 'that members of the community enjoy in their homes ... a feeling of well-being, tranquility and privacy.'"[2]

The case stemmed from an appeal of the small Milwaukee suburb's ordinance by two people who had picketed on a street outside a physician's home because he "apparently performs abortions at two clinics in neighboring towns."[3]

After the ruling a number of cities, including Topeka, Kansas, and San Diego adopted ordinances that respectively say, "It shall be unlawful for any person to engage in picketing which is directed, focused or targeted at a resident and which takes place before or about that residence," and "It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the City of San Diego."

According to the City Attorney's Office, it has used a 100-foot requirement in the proposed ordinance because there is some indication that some legal arguments have in other places have centered on what constitutes "before or about" a residence.

One of the most recent ordinances City Council staff found (Rancho Palos Verdes, California, adopted May 29) set a 300-foot requirement. According to a memorandum by the Rancho Palos Verdes, California, city attorney, the 300-foot requirement "creates a minimum zone of protection for residents from unwanted harassment and intimidation, but does not prevent picketers from disseminating their message to the general public or to local residents from a lawful distance."[4]

The ordinance also includes a prohibition of "loud and raucous noise." The city attorney's memorandum contends that the noise prohibition "complies with the legal standards listed above in that it is targeted at the intent and effect of the noise, not its content."[5]

Other ordinances include what appears to be a complete prohibition in the Minneapolis suburb of New Brighton, Minnesota, and a two-person limit plus a 9 a.m. to 5 p.m. restriction in Salinas, California.

One issue the City Council may wish to consider is identifying who a demonstration's audience is. The Supreme Court ruling identified the audience as the person whose house the demonstrators picketed near. It appears every ordinance found in City Council staff research assumes the same thing. However, it may be that the larger goal of demonstrators is to identify a person to the larger neighborhood as someone whose actions the demonstrators oppose. That would appear to make the people living near the person identified the actual audience. One then might ask whether the people living near that person a captive audience subject to unwanted speech.

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[1] Attachment: Memorandum from University of Utah.
[2] Attachment: Frisby v. Schultz, 487 U.S. 474 (1988), Page 1.
[3] Ibid, Page 3.
[4] Attachment No. 3, Memorandum and Ordinance of Rancho Palos Verde, California, Page 1.
[5] Ibid, Page 2.

THE UNIVERSITY OF UTAH

# MEMORANDUM

TO: Salt Lake City Council Members

FROM: The University of Utah
Raymond Gesteland, Vice President for Research,
Kim Wirthlin, Vice President for Government Relations
Phyllis Vetter, Associate General Counsel

DATE: July 11, 2007

RE: Need for City Ordinance to Curtail Protests Targeted at Private Homes

## INTRODUCTION

The University strongly urges the City Council to enact an ordinance to eliminate or reduce the ability of any individual or group to engage in demonstrations targeted at private homes. University employees who are residents of Salt Lake City and whose work involves federally approved and heavily regulated animal research are the targets of a campaign of intimidation and harassment, the core of which consists of demonstrations directed at their homes, families and neighbors.

## DISCUSSION

During the first quarter of 2005, two of the University's faculty members were subjected to at least three demonstrations targeted at their home and at their neighbors, on the evenings of Sunday, January 2, Sunday, January 30, and Wednesday, March 23. Since October 2006, the same faculty members have been subjected to approximately a half dozen additional demonstrations directed at their home and at their neighbors. They have described the demonstrators' behavior as "shouting for 5 to 10 minutes" on at least one occasion and "screaming and scaring the babysitter" on at least one

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occasion. They have asked whether they and their neighbors, several of whom are also University employees, would have to spend the summer locked inside their home. Another researcher who lives in their neighborhood has also been targeted and has experienced serious vandalism at property he owns in the county.

Since October 2006, another University researcher who lives in another Salt Lake City neighborhood has also been subjected to about a half dozen demonstrations directed at her home and at her neighbors, several of whom are also University employees. On Saturday, March 10, 2007, a particularly disruptive demonstration was held. A video recording of a small portion of that demonstration is being provided as is a transcript of the comments shouted through a bullhorn. On Sunday, April 22, 2007, at approximately 8:00 p.m., protesters "chanted non-stop for about 30 minutes."

This is not a problem that will resolve itself or go away if ignored. As the extremists who carry out these demonstrations are fond of saying, "We're never going away and we always win." Enclosed with this memo are the following examples of statements and images made or posted by members of Utah Primate Freedom and other "activists."

1. Photograph of March 10, 2007 demonstration captioned "I am a terrorist with mittens!"

2. Utah Primate Freedom posting threatening, "Whether we show up at their homes on Christmas, at work when they bring in shipments of animals, at their domestic violence trials, or bringing them to court; UPF will confront the vivisectors and their enablers anytime and anywhere."

3. CD with video recording posted by Utah Primate Freedom of a portion of the March 10, 2007 demonstration with a written transcript of comments shouted through a bullhorn. "We're never going away and we always win."

4. Utah Primate Freedom posting describing harassment of researchers, including the researcher targeted in the enclosed video recording, including the following threats: "We're going to be back allllllll the time until you stop torturing animals." "Birthdays, Christmas, Thanksgiving Dinners; don't expect anything less than screaming protesters at your home on these days."

5. Utah Primate Freedom postings regarding "Week of Action" in October 2006 and harassment of researchers and their families at their homes, with a picture of an assault rifle held by masked extremists at a downtown protest held the same week. Referring to a demonstration held that week at the home of two University faculty members, "When we were here before she was pregnant and now she lives there with her son [name] and her husband [name, who] is a professor of Mathematics at the University of Utah . . . We had loads of fun being at [her] house before so we wanted to start the tradition again." "After staying at [her] house for around an hour, we walked to our next target . . . only a block and a half away."

## CONCLUSION

The City has a duty to its residents to protect their right to the quiet enjoyment of their homes and residential neighborhoods and their right to engage in important, productive work without intimidation and harassment. We ask you to enact an effective ordinance to curtail the unreasonable, threatening and disruptive behavior demonstrated by the enclosures.

# Enclosure 1

**I am a terrorist**
with mittens!

Post a comment | Report This Image

# Enclosure 2

**UPF ACTIVIST KATIE PATTERSON APPEALS FOR INFO >>**

Like all vivisection labs, the ARC has a history of secrecy and cover ups. In 2004, a long and drawn out legal battle for protocols of primate research made headlines in Salt Lake City. The public and the student body saw through the University's propaganda and argued that this information ought to be open to public scrutiny.

Recently, the University has been pursuing newer strategies to circumvent our public records requests. In November, UPF held a "public records request" party where activists met up, had a good time, made public records requests, and then followed it up with some good ol' fashioned home demos.

The University responded to almost all the requests demanding ridiculous exhorbitant fees. $50 for a census of animals. $150 for meeting minutes. $300 for daily care logs. $500 for correspondence from the ARC to government and accrediting agencies. The list goes on.

After much deliberation, we have chosen our test case that we plan to fight with. Once we are victorious with this case, we plan to use the precedent established to gain access to the other records we seek. Some of these records we've been fighting over for years and still have yet to see them. Now we're following through and we'll keep fighting the U until someone gets them in line.

Katie Patterson is a U of U student and dedicated UPF activist. In addition to filling her house and time with foster dogs, she campaigns against U of U primate vivisection and advocates for an end to vivisection. She requested a list of names of every employee of the animal lab - the University has denied her, and now she is appealing to the same State Records Committee we wound up three years ago.

The information she seeks is very controversial. But that's precisely because we live in a society that has become numb to the idea of personal responsibility. These individuals don't want to brand their name on the torture they case every day when they go to work. They're afraid that people may start saying "John Doe tortures animals" instead of the ambiguous and non-confrontational "University of Utah tortures animals." We seek to reverse this trend of deferring your moral responsibility on your occupation. That attitude has resulted in the greatest human evil, and we plan to continue our proud tradition of dropping names in our discussion of this torture.

Plus, we imagine the University won't like us contacting their staff to see if there are any compassionate individuals inside those lab walls who have stories to tell, now will they?

This is another stage in a multi-faceted animal liberation campaign. Whether we show up at their homes on Christmas, at work when they bring in shipments of animals, at their domestic violence trials, or bringing them to court; UPF will confront the vivisectors and their enablers anytime and anywhere. This campaign is here to stay until primate vivisection is no more in Utah.

# Enclosure 3

# TRANSCRIPT
of
comments shouted through a bullhorn
at
a demonstration targeted at the home of a researcher earlier this year

(actual audio recording can be heard on enclosed CD)

. . . Look at how much easier their life has been without having to deal with nagging animal rights activists.

Dario Ringach at UCLA already sent a statement to the Primate Freedom Project, saying he would never use primates again in research.

Your own colleague here at University of Utah, Robert Donahoe, just sent us an email a couple months ago. He can only take a couple months of heat, and I think if you asked him, he'd be very happy with his decision to stop using primates.

We may be only campaigning against you so far for a few months. But we have absolutely no problem making it a few years. We're never going away and we always win.

Make no mistake, Jennifer, we will be here in 2008, 2009, 2112. I'll be here in a walker with this bullhorn if I need to be.

I don't get any sleep at night knowing what you're doing to those animals, and anyone who's looked into your research can see what a pile of crap it is. You haven't done anything to advance human knowledge of disease. You haven't cured one single life. You've only succeeded to line your pockets with our money. That's unacceptable.

It's unacceptable that you're here in our community from a lab that has dogs who were left to hang inside their cages, ferrets who died from lack of veterinary care, and primates who underwent surgery without anesthesia. We don't welcome people like you. Hey Jennifer, what do you say?

# Enclosure 4

Utah Primate Freedom

**Last Updated:**
Mar 12, 2007

Send Message
Instant Message
Email to a Friend
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**Gender:** Female
**Status:** Single
**Age:** 86
**Sign:** Scorpio

**City:** SALT LAKE CITY
**State:** Utah
**Country:** US

**Signup Date:**
09/29/06

**Monday, February 12, 2007**

**Feb. 10 2007: Home Demos for Leventhal/Ichida**

ICHIDA AND LEVENTHAL GET THE DEMO TREATMENT

Another day on the town for Utah Primate Freedom.

First was our favorite house of Jennifer Ichida. Why do we love this neighborhoo Because this neighborhood loves us. Ichida lives in the Avenues amongst very progressively minded people who are very sympathetic with us (including people her building) and we always feel a warm welcome when we are in her neighborh (with the exception of one redneck neighbor who is out of place in the Avenues called us COMMIES). There's also a coffee shop kitty corner from her house whe activists can go and use the restroom and come back for some more demoing. About 20 of us stuck around Ichida's leafleting cars/neighbors, handing out DVD vivisection, and just overall creating a spectacle for over an hour.

The real interesting bit came that evening when activists made the trip out to Leventhal's mansion in Holladay Utah. When we say mansion we mean MANSIOI it looks like a Hollywood celebrity should live here with the 10 foot high gates ar long private driveway - Audie sure likes to be secluded and we imagine he hates having us show up with our favorite banner in the world (see pictures at http://s163.photobucket.com/albums/t289/utahprimatefreedom/February10200

After chanting, leafleting, and having a great time naming and shaming Audie; a police car showed up. The police officer stated that someone had made a report that someone was trying to break in. Then two officers scaled the fence (with difficulty) to try and hunt down these non-existent trespassers. Then a 2nd cop showed up. Then a 3rd cop car. Then a 4th cop car. Then a 5th cop car. Then an ambulance. And then a fire truck.

No this isn't a joke - Audie had about all the public safety services in Salt Lake County in front of his house and one screaming irate woman in his driveway (we assume his wife?). After she went back inside, a little while later paramedics wei deployed because of a 'medical incident' inside. We have no idea what this could be - and we were speculating that Audie could've hit her again (as he did just a months ago...again...). But then who showed up but our favorite person AUDIE. What a warm greeting - 5 police cars, a fire engine, a paramedic, and around a dozen passionate animal activists who hate your guts and everything your caree stands for. We were videotaped and had our photographs taken (as though we aren't used to this) but eventually decided we had thoroughly embarassed Audie and parted.

Audie don't you realize that you and your odd family just make our job more fur We're going to be back allllllllll the time until you stop torturing animals.

# Enclosure 5

**ANIMAL RIGHTS WEEK OF ACTION**

**What:** A week of protests for animals in labs

**When:** October 15-22, 2006 (everyday)

**Where:** All over Salt Lake City

**Why:** Because animals need us to take action

The largest assocation of animal torturers are holding their annual conference in Salt Lake this year. We need to let them know that **people who harm animals for the sake of profit are not welcome**. A full week of action is planned against animal abusers. Please contact us or see the website for more information.

**(801) 347-7501** **utahprimatefreedom.com**

**WEEK OF ACTION DAY 7 >>**

We wrapped up the week of action with 3 very important home demos.

First in the afternoon a handful of activists showed up at Ray D. Lloyd's house in West Jordan. Ray and his wife Louise were home, and much to our surprise Louise answered the door for us. We asked to speak with Ray but she said he didn't want to talk with us. So we chatted with her. Ray Lloyd has poisoned beagles with radioactive chemicals now for nearly half a century. He hasn't studies on animals directly for a few years, but we felt a demo was still justified because of the tens of thousands of dead beagles because of Lloyd and because he is still on the NIH/U of U payroll.

Louise tried to tell us that Ray is completely retired and no longer receives NIH grants. Liar, liar, pants on fire. He does have a grant analyzing old data he's collected and it lasts until July of 2007. The grant number is 5R01CA066759 and in 2005 (the last year that complete data is available) Ray received $242,320 for this grant.

Don't believe us? Check out the websites:

**NIH $$$ Data**
**NIH Project Data**

Our research showed us that Ray was born on March 10, 1930. This puts him at 76 years old so it is reasonable to assume he will be retiring soon. It is unfortunate that someone who killed and maimed as much as Ray did went an entire career without much scrutiny. It's a shame the media is not taking more of an interest exposing such a waste of money and a system of cruelty - it's left up to us animal activists.

So we carried that torch of naming and shaming back to an old friend's house - Alessandra Angelucci. When we were here before she was pregnant and now she lives there with her son Luca and her husband Paul Bressloff. Paul is a professor of Mathematics at the University of Utah and co-publishes with Angelucci. Angelucci conducts the same type of pointless and invasive vision studies that Jennifer Ichida does. We had loads of fun being at Angelucci's before so we wanted to start the tradition again.

Apparently though, Angelucci didn't have loads of fun. When activists rolled up there was a University of Utah security vehicle parked in front of her house. When we showed up he promptly made a phone call and another security vehicle showed up. Then a University of Utah police officer. Then a SLC police officer. Then another. All in all, a total of seven police/security vehicles were parked in front of Angelucci's creating a great big spectacle for us 12 activists. Thanks!

Police told us we couldn't wear masks and asked the people in black bloc to remove their face coverings. And be subjected to your frivolous civil lawsuits? I think not! We do our homework and we know our rights; it's not illegal to wear a mask unless it's in the commission of a crime. Activists kept their masks on while the police officer went and researched the statutes. He came back to report that we were correct and the masks stayed on.

After this week of action we are convinced that Salt Lake is the place for anti-vivisection not just because there are plenty of scummy people to target, but because public opinion seems to be so much on our side. Again neighbors told us they wholeheartedly supported us, and some said they remember us from before and were glad that we were back. We've already been emailed by one neighbor wanting to show up at our next week of action (and there will be a next).

After staying at Angelucci's for around an hour, we walked to our next target - Audie Leventhal. Audie owns and lives in a second home that is only a block and a half away from Angelucci. We were again struck by how much money these people make - this home had to be worth close to a million dollars. One police officer followed us to our next target and we held a brief demo and leafletted neighbors. One neighbor knew all about Leventhal's sordid past; when he was offered a leaflet he smirked and said "yeah that Audie is a real charmer, isn't he?"

We also learned how different police officers react when they're not on camera. One police officer followed us as we leafletted neighbors and cryptically threatened us with arrest if we didn't stop leafletting. When the camera showed up (unfortunately a bit late) to memorialize his unconstitutional demand, he immediately shut his mouth and we went about our business leafletting.

We never give in and we always win. You never know when we'll be back Utah vivisctors - and this is proven by the fact that we went back to Angelucci's once again in the same night after the Leventhal demo. This time all her house lights were on so we know for sure that she was home during our first visit. Obviously they've been trained to turn off the lights and act like they aren't home - but these demos are done for your neighbors just as much as you. And they don't stop. And we don't stop.

Full contact information and details on all targets during this week of action will soon go live - 10.25.06. If you couldn't attend this week of action but wanted to help in some way, tune in Wednesday morning so you can get the information and make phone calls, emails, and write letters. This really is only the beginning - it doesn't end until the suffering does.

//UPF//

**Videos & Pictures**

http://www.utahprimatefreedom.com/#
[click on the AALAS logo]

**AALAS & HLS DESCEND ON SALT LAKE >>**

The American Assocation for Laboratory Animal Science (AALAS) is the largest formal organization of exclusively animal researchers. Each year they hold a conference to discuss ways to maximize profits, use animals in research, and methods to curtail the animal rights movement. This year their largest sponsor is the notorious Huntingdon Life Sciences (HLS). HLS is most famous for being exposed numerous times, often on camera, for abusing animals. One incident included footage of a lab technician punching 4 month old beagle puppies in the face. This is the type of prestige that AALAS welcomes to their conferences.

They decided to hold their 2006 conference in Salt Lake. We intend to demonstrate to them that this was a big mistake. A full week of action is planned against vivisection in response to this conference. The first half of the week will directly target the conference; while the second half will expand to include Utah vivisectors.

We welcome out-of-towners to our event and will do what we can to support your visit. Salt Lake really does have a lot to offer vegans and we hope that many compassionate activists will decide to try and re arrange their schedule to make it for part or all of the week.

The recent convictions of the SHAC7 and passage of the Animal Enterprise Terrorism Act (AETA) make it even more important that we be present in large numbers at this conference. We need to let them know we'll continue our fight and we don't give a damn about their repression. The animals deserve better and we know this. Our fight doesn't end until HLS closes and vivisection ceases to be.

# U.S. Supreme Court

## FRISBY v. SCHULTZ, 487 U.S. 474 (1988)

**487 U.S. 474**

**FRISBY ET AL. v. SCHULTZ ET AL.**
**APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

**No. 87-168.**

**Argued April 20, 1988**
**Decided June 27, 1988**

Brookfield, Wisconsin, enacted an ordinance making it "unlawful for any person to engage in picketing before or about the residence or dwelling of any individual," and declaring that the primary purpose of the ban is to "protec[t] and preserv[e] the home" through assurance "that members of the community enjoy in their homes . . . a feeling of well-being, tranquility, and privacy." Appellees, who wish to picket a particular home in Brookfield, filed suit under 42 U.S.C. 1983 against appellants, the town and several of its officials, alleging that the ordinance violated the First Amendment. The Federal District Court granted appellees' motion for a preliminary injunction, concluding that the ordinance was not narrowly tailored enough to restrict protected speech in a

public forum. The Court of Appeals ultimately affirmed.

*Held:*

The ordinance is not facially invalid under the First Amendment. Pp. 479-488.

(a) Although the town's streets are narrow and of a residential character, they are nevertheless traditional public fora, Carey v. Brown, 447 U.S. 455, and, therefore, the ordinance must be judged against the stringent standards this Court has established for restrictions on speech in such fora. Perry Education Assn. v. Perry Local Educators' Assn., 460 U.S. 37. Pp. 480-481.

(b) The ordinance is content neutral and cannot be read as containing an implied exception for peaceful labor picketing on the theory that an express state law protection for such picketing takes precedence. This Court will defer to the rejection of that theory by the lower courts. which are better schooled in and more able to interpret Wisconsin law. Pp. 481-482.

(c) The ordinance leaves open ample alternative channels of communication. Although the precise scope of the ordinance's ban is not further described within its text, its use of the singular form of the words "residence" and "dwelling" suggests that it is intended to prohibit only picketing focused on, and taking place in front of, a particular residence, a reading which is supported by appellants' representations at oral argument. The lower courts' contrary interpretation of the ordinance as banning "all picketing in residential areas" constitutes plain error, and runs afoul of the well-established principle that statutes will be

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interpreted to avoid constitutional difficulties. Viewed in the light of the narrowing construction, the ordinance allows protestors to enter residential neighborhoods, either alone or marching in groups; to go door-to-door to proselytize their views or distribute literature; and to contact residents through the mails or by telephone, short of harassment. Pp. 482-484.

(d) As is evidenced by its text, the ordinance serves the significant government interest of protecting residential privacy. An important aspect of such privacy is the protection of unwilling listeners within their homes from the intrusion of objectionable or unwanted speech. See, e. g., FCC v. Pacifica Foundation, 438 U.S. 726. Moreover, the ordinance is narrowly tailored to serve that governmental interest, since, although its ban is complete, it targets and eliminates no more than the exact source of the "evil" it seeks to remedy: offensive and disturbing picketing focused on a "captive" home audience. It does not prohibit more generally directed means of public communication that may not be completely banned in residential areas. Pp. 484-488.

822 F.2d 642, reversed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BLACKMUN, SCALIA, and KENNEDY, JJ., joined. WHITE, J., filed an opinion concurring in the judgment, post, p. 488. BRENNAN, J., filed a dissenting opinion, in which MARSHALL, J., joined, post, p. 491. STEVENS, J., filed a dissenting opinion, post, p. 496.

Harold H. Fuhrman argued the cause and filed briefs for appellants.

Steven Frederick McDowell argued the cause for appellees. With him on the brief was Walter M. Weber.*

[Footnote *] Briefs of amici curiae urging reversal were filed for the National Institute of Municipal Law Officers by William I. Thornton, Jr., Roy D. Bates, William H. Taube, Roger F. Cutler, Robert J. Alfton, James K. Baker, Joseph N. deRaismes, Frank B. Gummey III, Robert J. Mangler, Neal E. McNeill, Analeslie Muncy, Dante R. Pellegrini, Clifford D. Pierce, Jr., Charles S. Rhyne, and Benjamin L. Brown; for the National League of Cities et al. by Benna Ruth Solomon and Mark B. Rotenberg; and for the Pacific Legal Foundation by Ronald A. Zumbrun and Robin L. Rivett.

Briefs of amici curiae urging affirmance were filed for the American Civil Liberties Union et al. by Harrey Grossman, Jane M. Whicher, Jonathan K. Baum, John A. Powell, Steven R. Shapiro, and William Lynch; for the American Federation of Labor and Congress of Industrial

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Organizations by Marsha S. Berzon and Laurence Gold; and for the Rutherford Institute et al. by Robert R. Melnick, William Bonner, John F. Southworth, Jr., W. Charles Bundren, Alfred J. Lindh, Ira W. Still III, William B. Hollberg, Randall A. Pentiuk, Thomas W. Strahan, John W. Whitehead, A. Eric Johnston, and David E. Morris.

Charles E. Rice, Thomas Patrick Monaghan, and James M. Henderson, Sr., filed a brief for the American Life League, Inc., et al. as amici curiae.

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JUSTICE O'CONNOR delivered the opinion of the Court.

Brookfield, Wisconsin, has adopted an ordinance that completely bans picketing "before or about" any residence. This case presents a facial First Amendment challenge to that ordinance.

## I

Brookfield, Wisconsin, is a residential suburb of Milwaukee with a population of approximately 4,300. The appellees, Sandra C. Schultz and Robert C. Braun, are individuals strongly opposed to abortion and wish to express their views on the subject by picketing on a public street outside the Brookfield residence of a doctor who apparently performs abortions at two clinics in neighboring towns. Appellees and others engaged in precisely that activity, assembling outside the doctor's home on at least six occasions between April 20, 1985, and May 20, 1985, for periods ranging from one to one and a half hours. The size of the group varied from 11 to more than 40. The picketing was generally orderly and peaceful; the town never had occasion to invoke any of its various ordinances prohibiting obstruction of the streets, loud and unnecessary noises, or disorderly conduct. Nonetheless, the picketing generated substantial controversy and numerous complaints.

The Town Board therefore resolved to enact an ordinance to restrict the picketing. On May 7, 1985, the town passed an ordinance that prohibited all picketing in residential neighborhoods except for labor picketing. But after reviewing this Court's decision in Carey v. Brown, 447 U.S. 455 (1980), which invalidated a similar ordinance as a violation of the

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Equal Protection Clause, the town attorney instructed the police not to enforce the new ordinance and advised the Town Board that the ordinance's labor picketing exception likely rendered it unconstitutional. This ordinance was repealed on May 15, 1985, and replaced with the following flat ban on all residential picketing:

> "It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the Town of Brookfield." App. to Juris. Statement A-28.

The ordinance itself recites the primary purpose of this ban: "the protection and preservation of the home" through assurance "that members of the community enjoy in their homes and dwellings a feeling of well-being, tranquility, and privacy." Id., at A-26. The Town Board believed that a ban was necessary because it determined that "the practice of picketing before or about residences and dwellings causes emotional disturbance and distress to the occupants . . . [and] has as its object the harassing of such occupants." Id., at A-26 - A-27. The ordinance also evinces a concern for public safety, noting that picketing obstructs and interferes with "the free use of public sidewalks and public ways of travel." Id., at A-27.

On May 18, 1985, appellees were informed by the town attorney that enforcement of the new, revised ordinance would begin on May 21, 1985. Faced with this threat of arrest and prosecution, appellees ceased picketing in Brookfield and filed this lawsuit in the United States District Court for the Eastern District of Wisconsin. The complaint was brought under 42 U.S.C. 1983 and sought declaratory as well as preliminary and permanent injunctive relief on the grounds that the ordinance violated the First Amendment. Appellees named appellants - the three members of the Town Board, the Chief of Police, the town attorney, and the town itself - as defendants.

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The District Court granted appellees' motion for a preliminary injunction. The court concluded that the ordinance was not narrowly tailored enough to restrict protected speech in a public forum. 619 F. Supp. 792, 797 (1985). The District Court's order specified that unless the appellants requested a trial on the merits within 60 days or appealed, the preliminary injunction would become permanent. Appellants requested a trial and also appealed the District Court's entry of a preliminary injunction.

A divided panel of the United States Court of Appeals for the Seventh Circuit affirmed. 807 F.2d 1339 (1986). The Court of Appeals subsequently vacated this decision, however, and ordered a rehearing en banc. 818 F.2d 1284 (1987). After rehearing, the Court of Appeals affirmed the judgment of the District Court by an equally divided vote. 822 F.2d 642 (1987). Contending that the Court of Appeals had rendered a final judgment holding the ordinance "to be invalid as repugnant to the Constitution," 28 U.S.C. 1254 (2), appellants attempted to invoke our mandatory appellate jurisdiction. App. to Juris. Statement A-25 (citing 1254 (2)). We postponed further consideration of our appellate jurisdiction until the hearing on the merits. 484 U.S. 1003 (1988).

Appellees argue that there is no jurisdiction under 1254 (2) due to the lack of finality. They point out that the District Court entered only a preliminary injunction and that appellants requested a trial on the merits, which has yet to be conducted. These considerations certainly suggest a lack of finality. Yet despite the formally tentative nature of its order, the District Court appeared ready to enter a final judgment since it indicated that unless a trial was requested a permanent injunction would issue. In addition, while appellants initially requested a trial, they no longer adhere to this position and now say that they would have no additional arguments to offer at such a trial. Tr. of Oral Arg. 7. In the context of this case, however, there is no need to decide

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whether jurisdiction is proper under 1254(2). Because the question presented is of substantial importance, and because further proceedings below would not likely aid our consideration of it, we choose to avoid the finality issue simply by granting certiorari. Accordingly, we dismiss the appeal and, treating the jurisdictional statement as a petition for certiorari, now grant the petition. See 28 U.S.C. 2103. Cf. Mississippi Power & Light Co. v. Mississippi ex rel. Moore, ante, at 369, n. 10. For convenience, however, we shall continue to refer to the parties as appellants and appellees, as we have in previous cases. See ibid.; Peralta v. Heights Medical

Center, Inc., 485 U.S. 80, 84, n. 4 (1988).

## II

The antipicketing ordinance operates at the core of the First Amendment by prohibiting appellees from engaging in picketing on an issue of public concern. Because of the importance of "uninhibited, robust, and wide-open" debate on public issues, New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964), we have traditionally subjected restrictions on public issue picketing to careful scrutiny. See, e. g., Boos v. Barry, 485 U.S. 312, 318 (1988); United States v. Grace, 461 U.S. 171 (1983); Carey v. Brown, 447 U.S. 455 (1980). Of course, "[e]ven protected speech is not equally permissible in all places and at all times." Cornelius v. NAACP Legal Defense & Educational Fund, Inc., 473 U.S. 788, 799 (1985).

To ascertain what limits, if any, may be placed on protected speech, we have often focused on the "place" of that speech, considering the nature of the forum the speaker seeks to employ. Our cases have recognized that the standards by which limitations on speech must be evaluated "differ depending on the character of the property at issue." Perry Education Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 44 (1983). Specifically, we have identified three types of fora: "the traditional public forum, the public forum created

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by government designation, and the nonpublic forum." Cornelius, supra, at 802.

The relevant forum here may be easily identified: appellees wish to picket on the public streets of Brookfield. Ordinarily, a determination of the nature of the forum would follow automatically from this identification; we have repeatedly referred to public streets as the archetype of a traditional public forum. See, e. g., Boos v. Barry, supra, at 318; Cornelius, supra, at 802; Perry, 460 U.S., at 45. "[T]ime out of mind" public streets and sidewalks have been used for public assembly and debate, the hallmarks of a traditional public forum. See ibid.; Hague v. CIO, 307 U.S. 496, 515 (1939) (Roberts, J.). Appellants, however, urge us to disregard these "cliches." Tr. of Oral Arg. 16. They argue that the streets of Brookfield should be considered a nonpublic forum. Pointing to the physical narrowness of Brookfield's streets as well as to their residential character, appellants contend that such streets have not by tradition or designation been held open for public communication. See Brief for Appellants 23 (citing Perry, supra, at 46).

We reject this suggestion. Our prior holdings make clear that a public street does not lose its status as a traditional public forum simply because it runs through a residential neighborhood. In Carey v. Brown - which considered a statute similar to the one at issue here, ultimately striking it down as a violation of the Equal Protection Clause because it included an exception for labor picketing - we expressly recognized that "public streets and sidewalks in residential neighborhoods," were "public for[a]." 447 U.S., at 460-461. This rather ready identification virtually forecloses appellants' argument. See also Perry, supra, at 54-55 (noting that the "key" to Carey "was the presence of a public forum").

In short, our decisions identifying public streets and sidewalks as traditional public fora are not accidental invocations of a "cliche," but recognition that "[w]herever the title of

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streets and parks may rest, they have immemorially been held in trust for the use of the public." Hague v. CIO, supra, at 515 (Roberts, J.). No particularized inquiry into the precise nature of a specific street is necessary; all public streets are held in the public trust and are properly considered traditional public fora. Accordingly, the streets of Brookfield are traditional public fora. The residential character of those streets may well inform the application of the relevant test, but it does not lead to a different test; the anti-picketing ordinance must be

judged against the stringent standards we have established for restrictions on speech in traditional public fora:

> "In these quintessential public for[a], the government may not prohibit all communicative activity. For the State to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. . . . The State may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." Perry, supra, at 45 (citations omitted).

As Perry makes clear, the appropriate level of scrutiny is initially tied to whether the statute distinguishes between prohibited and permitted speech on the basis of content. Appellees argue that despite its facial content-neutrality, the Brookfield ordinance must be read as containing an implied exception for labor picketing. See Brief for Appellees 20-26. The basis for appellees' argument is their belief that an express protection of peaceful labor picketing in state law, see Wis. Stat. 103.53(1) (1985-1986), must take precedence over Brookfield's contrary efforts. The District Court, however, rejected this suggested interpretation of state law, 619 F. Supp., at 796, and the Court of Appeals affirmed, albeit ultimately by an equally divided court. 822 F.2d 642 (1987).

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See also 807 F.2d, at 1347 (original panel opinion declining to reconsider District Court's construction of state law). Following our normal practice, "we defer to the construction of a state statute given it by the lower federal courts . . . to reflect our belief that district courts and courts of appeals are better schooled in and more able to interpret the laws of their respective States." Brockett v. Spokane Arcades, Inc., 472 U.S. 491, 499-500 (1985). See Virginia v. American Booksellers Assn., 484 U.S. 383, 395 (1988) ("This Court rarely reviews a construction of state law agreed upon by the two lower federal courts"). Thus, we accept the lower courts' conclusion that the Brookfield ordinance is content neutral. Accordingly, we turn to consider whether the ordinance is "narrowly tailored to serve a significant government interest" and whether it "leave[s] open ample alternative channels of communication." Perry, 460 U.S., at 45.

Because the last question is so easily answered, we address it first. Of course, before we are able to assess the available alternatives, we must consider more carefully the reach of the ordinance. The precise scope of the ban is not further described within the text of the ordinance, but in our view the ordinance is readily subject to a narrowing construction that avoids constitutional difficulties. Specifically, the use of the singular form of the words "residence" and "dwelling" suggests that the ordinance is intended to prohibit only picketing focused on, and taking place in front of, a particular residence. As JUSTICE WHITE's concurrence recounts, the lower courts described the ordinance as banning "all picketing in residential areas." Post, at 490. But these general descriptions do not address the exact scope of the ordinance and are in no way inconsistent with our reading of its text. "Picketing," after all, is defined as posting at a particular place, see Webster's Third New International Dictionary 1710 (1981), a characterization in line with viewing the ordinance as limited to activity focused on a single residence.

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Moreover, while we ordinarily defer to lower court constructions of state statutes, see supra, at 482, we do not invariably do so, see Virginia v. American Booksellers Assn., supra, at 395. We are particularly reluctant to defer when the lower courts have fallen into plain error, see Brockett v. Spokane Arcades, Inc., supra, at 500, n. 9, which is precisely the situation presented here. To the extent they endorsed a broad reading of the ordinance, the lower courts ran afoul of the well-established principle that statutes will be interpreted to avoid constitutional difficulties. See, e. g., Erznoznik v. City of Jacksonville, 422 U.S. 205, 216 (1975); Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973). Cf. Edward J. DeBartolo Corp. v. Florida Gulf Coast Building &

Construction Trades Council, 485 U.S. 568, 575 (1988). Thus, unlike the lower courts' judgment that the ordinance does not contain an implied exception for labor picketing, we are unable to accept their potentially broader view of the ordinance's scope. We instead construe the ordinance more narrowly. This narrow reading is supported by the representations of counsel for the town at oral argument, which indicate that the town takes, and will enforce, a limited view of the "picketing" proscribed by the ordinance. Thus, generally speaking, "picketing would be having the picket proceed on a definite course or route in front of a home." Tr. of Oral Arg. 8. The picket need not be carrying a sign, id., at 14, but in order to fall within the scope of the ordinance the picketing must be directed at a single residence, id., at 9. General marching through residential neighborhoods, or even walking a route in front of an entire block of houses, is not prohibited by this ordinance. Id., at 15. Accordingly, we construe the ban to be a limited one; only focused picketing taking place solely in front of a particular residence is prohibited.

So narrowed, the ordinance permits the more general dissemination of a message. As appellants explain, the limited nature of the prohibition makes it virtually self-evident that ample alternatives remain:

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> "Protestors have not been barred from the residential neighborhoods. They may enter such neighborhoods, alone or in groups, even marching. . . . They may go door-to-door to proselytize their views. They may distribute literature in this manner . . . or through the mails. They may contact residents by telephone, short of harassment." Brief for Appellants 41-42 (citations omitted).

We readily agree that the ordinance preserves ample alternative channels of communication and thus move on to inquire whether the ordinance serves a significant government interest. We find that such an interest is identified within the text of the ordinance itself: the protection of residential privacy. See App. to Juris. Statement A-26.

> "The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." Carey v. Brown, 447 U.S., at 471. Our prior decisions have often remarked on the unique nature of the home, "the last citadel of the tired, the weary, and the sick," Gregory v. Chicago, 394 U.S. 111, 125 (1969) (Black, J., concurring), and have recognized that "[p] reserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits, is surely an important value." Carey, supra, at 471.

One important aspect of residential privacy is protection of the unwilling listener. Although in many locations, we expect individuals simply to avoid speech they do not want to hear, cf. Erznoznik v. City of Jacksonville, supra, at 210-211; Cohen v. California, 403 U.S. 15, 21-22 (1971), the home is different. "That we are often `captives' outside the sanctuary of the home and subject to objectionable speech . . . does not mean we must be captives everywhere." Rowan v. Post Office Dept., 397 U.S. 728, 738 (1970). Instead, a special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability

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to avoid intrusions. Thus, we have repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom. See, e. g., FCC v. Pacifica Foundation, 438 U.S. 726, 748-749 (1978) (offensive radio broadcasts); id., at 759-760 (Powell, J., concurring in part and concurring in judgment) (same); Rowan, supra (offensive mailings); Kovacs v. Cooper, 336 U.S. 77, 86-87 (1949) (sound trucks).

This principle is reflected even in prior decisions in which we have invalidated complete bans on expressive activity, including bans operating in residential areas. See, e. g., Schneider v. State, 308 U.S. 147, 162-163

(1939) (hand-billing); Martin v. Struthers, 319 U.S. 141 (1943) (door-to-door solicitation). In all such cases, we have been careful to acknowledge that unwilling listeners may be protected when within their own homes. In Schneider, for example, in striking down a complete ban on handbilling, we spoke of a right to distribute literature only "to one willing to receive it." Similarly, when we invalidated a ban on door-to-door solicitation in Martin, we did so on the basis that the "home owner could protect himself from such intrusion by an appropriate sign `that he is unwilling to be disturbed.'" Kovacs, 336 U.S., at 86. We have "never intimated that the visitor could insert a foot in the door and insist on a hearing." Ibid. There simply is no right to force speech into the home of an unwilling listener.

It remains to be considered, however, whether the Brookfield ordinance is narrowly tailored to protect only unwilling recipients of the communications. A statute is narrowly tailored if it targets and eliminates no more than the exact source of the "evil" it seeks to remedy. City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 808-810 (1984). A complete ban can be narrowly tailored, but only if each activity within the proscription's scope is an appropriately targeted evil. For example, in Taxpayers for Vincent we upheld an ordinance that banned all signs on public property

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because the interest supporting the regulation, an esthetic interest in avoiding visual clutter and blight, rendered each sign an evil. Complete prohibition was necessary because "the substantive evil - visual blight - [was] not merely a possible byproduct of the activity, but [was] created by the medium of expression itself." Id., at 810.

The same is true here. The type of focused picketing prohibited by the Brookfield ordinance is fundamentally different from more generally directed means of communication that may not be completely banned in residential areas. See, e. g., Schneider, supra, at 162-163 (handbilling); Martin, supra (solicitation); Murdock v. Pennsylvania, 319 U.S. 105 (1943) (solicitation). See also Gregory v. Chicago, supra (marching). Cf. Perry, 460 U.S., at 45 (in traditional public forum, "the government may not prohibit all communicative activity"). In such cases "the flow of information [is not] into . . . household[s], but to the public." Organization for a Better Austin v. Keefe, 402 U.S. 415, 420 (1971). Here, in contrast, the picketing is narrowly directed at the household, not the public. The type of picketers banned by the Brookfield ordinance generally do not seek to disseminate a message to the general public, but to intrude upon the targeted resident, and to do so in an especially offensive way. Moreover, even if some such picketers have a broader communicative purpose, their activity nonetheless inherently and offensively intrudes on residential privacy. The devastating effect of targeted picketing on the quiet enjoyment of the home is beyond doubt:

> "`To those inside . . . the home becomes something less than a home when and while the picketing . . . continue[s]. . . . [The] tensions and pressures may be psychological, not physical, but they are not, for that reason, less inimical to family privacy and truly domestic tranquility.'" Carey, supra, at 478 (REHNQUIST, J., dissenting) (quoting Wauwatosa v. King, 49 Wis. 2d 398, 411-412, 182 N. W. 2d 530, 537 (1971)).

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In this case, for example, appellees subjected the doctor and his family to the presence of a relatively large group of protesters on their doorstep in an attempt to force the doctor to cease performing abortions. But the actual size of the group is irrelevant; even a solitary picket can invade residential privacy. See Carey, 447 U.S., at 478-479 (REHNQUIST, J., dissenting) ("Whether . . . alone or accompanied by others . . . there are few of us that would feel comfortable knowing that a stranger lurks outside our home"). The offensive and disturbing nature of the form of the communication banned by the Brookfield ordinance thus can scarcely be questioned. Cf. Bolger v. Youngs Drug Products Corp., 463 U.S. 60, 83-84 (1983) (STEVENS, J., concurring in judgment) (as opposed to regulation of communications due to the ideas expressed, which "strikes at the core of First

Amendment values," "regulations of form and context may strike a constitutionally appropriate balance between the advocate's right to convey a message and the recipient's interest in the quality of his environment").

The First Amendment permits the government to prohibit offensive speech as intrusive when the "captive" audience cannot avoid the objectionable speech. See Consolidated Edison Co. v. Public Service Comm'n of New York, 447 U.S. 530, 542 (1980). Cf. Bolger v. Youngs Drug Products Corp., supra, at 72. The target of the focused picketing banned by the Brookfield ordinance is just such a "captive." The resident is figuratively, and perhaps literally, trapped within the home, and because of the unique and subtle impact of such picketing is left with no ready means of avoiding the unwanted speech. Cf. Cohen v. California, 403 U.S., at 21-22 (noting ease of avoiding unwanted speech in other circumstances). Thus, the "evil" of targeted residential picketing, "the very presence of an unwelcome visitor at the home," Carey, supra, at 478 (REHNQUIST, J., dissenting), is "created by the medium of expression itself." See Taxpayers for Vincent, supra, at 810. Accordingly, the Brookfield ordinance's

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complete ban of that particular medium of expression is narrowly tailored.

Of course, this case presents only a facial challenge to the ordinance. Particular hypothetical applications of the ordinance - to, for example, a particular resident's use of his or her home as a place of business or public meeting, or to picketers present at a particular home by invitation of the resident - may present somewhat different questions. Initially, the ordinance by its own terms may not apply in such circumstances, since the ordinance's goal is the protection of residential privacy, App. to Juris. Statement A-26, and since it speaks only of a "residence or dwelling," not a place of business, id., at A-28. Cf. Carey, supra, at 457 (quoting an antipicketing ordinance expressly rendered inapplicable by use of home as a place of business or to hold a public meeting). Moreover, since our First Amendment analysis is grounded in protection of the unwilling residential listener, the constitutionality of applying the ordinance to such hypotheticals remains open to question. These are, however, questions we need not address today in order to dispose of appellees' facial challenge.

Because the picketing prohibited by the Brookfield ordinance is speech directed primarily at those who are presumptively unwilling to receive it, the State has a substantial and justifiable interest in banning it. The nature and scope of this interest make the ban narrowly tailored. The ordinance also leaves open ample alternative channels of communication and is content neutral. Thus, largely because of its narrow scope, the facial challenge to the ordinance must fail. The contrary judgment of the Court of Appeals is

Reversed.

JUSTICE WHITE, concurring in the judgment.

I agree with the Court that an ordinance which only forbade picketing before a single residence would not be unconstitutional on its face. If such an ordinance were applied to the kind of picketing that appellees carried out here, it

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clearly would not be invalid under the First Amendment, for the picketing in this case involved large groups of people, ranging at various times from 11 individuals to more than 40. I am convinced, absent more than this record indicates, that if some single-residence picketing by smaller groups could not be forbidden, the range of possibly unconstitutional application of such an ordinance would not render it substantially overbroad and thus unconstitutional on its face.

This leaves the question, however, whether the ordinance at issue in this case forbids only single-residence picketing. The Court says that the language of the ordinance suggests that it is so limited. But the ordinance forbids "any person to engage in picketing before or about the residence or dwelling of any individual in the Town of Brookfield." Brookfield, Wis., Gen. Code 9.17(2), App. to Juris. Statement A-28. That language could easily be construed to reach not only picketing before a single residence, but also picketing that would deliver the desired message about a particular residence to the neighbors and to other passersby. Arguably, it would also reach picketing that is directed at the residences which are located in entire blocks or in larger residential areas. Indeed, the latter is the more natural reading of the ordinance, which seems to prohibit picketing in any area that is located "before or about" any residence or dwelling in the town, i. e., any picketing that occurs either in front of or anywhere around the residences that are located within the town.

Furthermore, there is no authoritative construction of this ordinance by the Wisconsin state courts that limits the scope of the proscription. There is, however, the interpretation that has been rendered in this case by both the lower federal courts with jurisdiction over the town whose law is at issue, which we rarely overturn and to which we routinely defer unless there is some fairly compelling argument for not doing so - an established practice that the Court relies on to resolve another aspect of this case. Ante, at 482. As I understand

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the District Court, it did not accept the construction of the ordinance which is urged here, holding instead that the ordinance was not narrowly tailored to meet the town's stated objectives, but "completely bans all picketing in residential neighborhoods," 619 F. Supp. 792, 797 (ED Wis. 1985), and is not "a constitutional time, place, and manner regulation of speech in a public forum," id., at 798. The panel that heard this case in the Court of Appeals, the opinion of which was of course vacated below, also thought that the question raised by the ordinance concerned the general validity of picketing "in a residential neighborhood," 807 F.2d 1339, 1348 (CA7 1986) (emphasis in original), and observed that the ordinance "restricts picketing" in the town "to the commercial strip along West Bluemound Road," ibid. The dissenting judge also understood the ordinance to have confined the ambit of lawful picketing to "any non-residential area." Id., at 1356 (Coffey, J., dissenting). Finally, I do not read the briefs filed by appellants in this Court to have argued that the ordinance should be narrowly construed to apply only to single-residence picketing. To the contrary, appellants' briefs in this Court repeatedly refer to the ordinance as banning all picketing in residential areas. Brief for Appellants 12-13, 13, 41, 42, 43; Reply Brief for Appellants 2, 8.

The Court endorses a narrow construction of the ordinance by relying on the town counsel's representations, made at oral argument, that the ordinance forbids only single-residence picketing. In light of the view taken by the lower federal courts and the apparent failure of counsel below to press on those courts the narrowing construction that has been suggested here, I have reservations about relying on counsel's statements as an authoritative statement of the law. It is true that several times in the past the Court, in reaching its decision on the validity of a statute, has relied on what it considered to be reliable and perhaps binding representations made by state and federal officials as to how a particular statute will be enforced. DeFunis v. Odegaard, 416 U.S. 312,

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317-318 (1974); Ehlert v. United States, 402 U.S. 99, 107 (1971); Gerende v. Board of Supervisors of Elections of Baltimore, 341 U.S. 56 (1951). But in none of these cases did the Court accept a suggested limiting construction of a state law that appears to be contrary to the views of the lower federal courts.

There is nevertheless sufficient force in the town counsel's representations about the reach of the ordinance to avoid application of the overbreadth doctrine in this case, which as we have frequently emphasized is such "strong medicine" that it "has been employed by the Court sparingly and only as a last resort." Broadrick v.

Oklahoma, 413 U.S. 601, 613 (1973). In my view, if the ordinance were construed to forbid all picketing in residential neighborhoods, the overbreadth doctrine would render it unconstitutional on its face and hence prohibit its enforcement against those, like appellees, who engage in single-residence picketing. At least this would be the case until the ordinance is limited in some authoritative manner. Because the representations made in this Court by the town's legal officer create sufficient doubts in my mind, however, as to how the ordinance will be enforced by the town or construed by the state courts, I would put aside the overbreadth approach here, sustain the ordinance as applied in this case, which the Court at least does, and await further developments.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

The Court today sets out the appropriate legal tests and standards governing the question presented, and proceeds to apply most of them correctly. Regrettably, though, the Court errs in the final step of its analysis, and approves an ordinance banning significantly more speech than is necessary to achieve the government's substantial and legitimate goal. Accordingly, I must dissent.

The ordinance before us absolutely prohibits picketing "before or about" any residence in the town of Brookfield,

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thereby restricting a manner of speech in a traditional public forum.[Footnote 1] Consequently, as the Court correctly states, the ordinance is subject to the well-settled time, place, and manner test: the restriction must be content and viewpoint neutral,[Footnote 2] leave open ample alternative channels of communication, and be narrowly tailored to further a substantial governmental interest. Ante, at 482; Perry Education Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 45 (1983).

Assuming one construes the ordinance as the Court does,[Footnote 3] I agree that the regulation reserves ample alternative channels of communication. Ante, at 482-484. I also agree with the Court that the town has a substantial interest in protecting its residents' right to be left alone in their homes. Ante, at 484-485; Carey v. Brown, 447 U.S. 455, 470-471 (1980). It is, however, critical to specify the precise scope of this interest. The mere fact that speech takes place in a residential neighborhood does not automatically implicate a residential privacy interest. It is the intrusion of speech into the

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home or the unduly coercive nature of a particular manner of speech around the home that is subject to more exacting regulation. Thus, the intrusion into the home of an unwelcome solicitor, Martin v. Struthers, 319 U.S. 141 (1943), or unwanted mail, Rowan v. Post Office Dept., 397 U.S. 728 (1970), may be forbidden. Similarly, the government may forbid the intrusion of excessive noise into the home, Kovacs v. Cooper, 336 U.S. 77 (1949), or, in appropriate circumstances, perhaps even radio waves, FCC v. Pacifica Foundation, 438 U.S. 726 (1978). Similarly, the government may prohibit unduly coercive conduct around the home, even though it involves expressive elements. A crowd of protesters need not be permitted virtually to imprison a person in his or her own house merely because they shout slogans or carry signs. But so long as the speech remains outside the home and does not unduly coerce the occupant, the government's heightened interest in protecting residential privacy is not implicated. See Organization for a Better Austin v. Keefe, 402 U.S. 415, 420 (1971).

The foregoing distinction is crucial here because it directly affects the last prong of the time, place, and manner test: whether the ordinance is narrowly tailored to achieve the governmental interest. I do not quarrel with the Court's reliance on City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789 (1984), for the proposition that a blanket prohibition of a manner of speech in particular public fora may nonetheless be

"narrowly tailored" if in each case the manner of speech forbidden necessarily produces the very "evil" the government seeks to eradicate. Ante, at 485-486; Vincent, 466 U.S., at 808; id., at 830 (BRENNAN, J., dissenting). However, the application of this test requires that the government demonstrate that the offending aspects of the prohibited manner of speech cannot be separately, and less intrusively, controlled. Thus here, if the intrusive and unduly coercive elements of residential picketing can be eliminated without simultaneously eliminating residential picketing

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completely, the Brookfield ordinance fails the Vincent test.

Without question there are many aspects of residential picketing that, if unregulated, might easily become intrusive or unduly coercive. Indeed, some of these aspects are illustrated by this very case. As the District Court found, before the ordinance took effect up to 40 sign-carrying, slogan-shouting protesters regularly converged on Dr. Victoria's home and, in addition to protesting, warned young children not to go near the house because Dr. Victoria was a "baby killer." Further, the throng repeatedly trespassed onto the Victorias' property and at least once blocked the exits to their home. 619 F. Supp. 792, 795 (ED Wis. 1985). Surely it is within the government's power to enact regulations as necessary to prevent such intrusive and coercive abuses. Thus, for example, the government could constitutionally regulate the number of residential picketers, the hours during which a residential picket may take place, or the noise level of such a picket. In short, substantial regulation is permitted to neutralize the intrusive or unduly coercive aspects of picketing around the home. But to say that picketing may be substantially regulated is not to say that it may be prohibited in its entirety. Once size, time, volume, and the like have been controlled to ensure that the picket is no longer intrusive or coercive, only the speech itself remains, conveyed perhaps by a lone, silent individual, walking back and forth with a sign. Cf. NLRB v. Retail Store Employees, 447 U.S. 607, 618 (1980) (STEVENS, J., concurring in part and concurring in result). Such speech, which no longer implicates the heightened governmental interest in residential privacy, is nevertheless banned by the Brookfield law. Therefore, the ordinance is not narrowly tailored.

The Court nonetheless attempts to justify the town's sweeping prohibition. Central to the Court's analysis is the determination that:

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> "[I]n contrast [to other forms of communication], the picketing [here] is narrowly directed at the household, not the public. The type of picketers banned by the Brookfield ordinance generally do not seek to disseminate a message to the general public, but to intrude upon the targeted resident, and to do so in an especially offensive way. Moreover, even if some such picketers have a broader communicative purpose, their activity nonetheless inherently and offensively intrudes on residential privacy." Ante, at 486.

That reasoning is flawed. First, the ordinance applies to all picketers, not just those engaged in the protest giving rise to this challenge. Yet the Court cites no evidence to support its assertion that picketers generally, or even appellees specifically, desire to communicate only with the "targeted resident." (In fact, the District Court, on the basis of an uncontradicted affidavit, found that appellees sought to communicate with both Dr. Victoria and with the public. 619 F. Supp., at 795.) While picketers' signs might be seen from the resident's house, they are also visible to passersby. To be sure, the audience is limited to those within sight of the picket, but focusing speech does not strip it of constitutional protection. Even the site-specific aspect of the picket identifies to the public the object of the picketers' attention. Cf. Boos v. Barry, 485 U.S. 312, 331 (1988). Nor does the picketers' ultimate goal - to influence the resident's conduct - change the analysis; as the Court held in Keefe, supra, at 419, such a goal does not defeat First Amendment protection.

A second flaw in the Court's reasoning is that it assumes that the intrusive elements of a residential picket are "inherent." However, in support of this crucial conclusion the Court only briefly examines the effect of a narrowly tailored ordinance: "[E]ven a solitary picket can invade residential privacy. See Carey, supra, at 478-479 (REHNQUIST, J., dissenting) (`Whether . . . alone or accompanied by others . . . there are few of us that would feel comfortable knowing that

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a stranger lurks outside our home')." Ante, at 487 (ellipses in Court's opinion). The Court's reference to the Carey dissent, its sole support for this assertion, conjures up images of a "lurking" stranger, secreting himself or herself outside a residence like a thief in the night, threatening physical harm. This hardly seems an apt depiction of a solitary picket, especially at midafternoon, whose presence is objectionable because it is notorious. Contrary to the Court's declaration in this regard, it seems far more likely that a picketer who truly desires only to harass those inside a particular residence will find that goal unachievable in the face of a narrowly tailored ordinance substantially limiting, for example, the size, time, and volume of the protest. If, on the other hand, the picketer intends to communicate generally, a carefully crafted ordinance will allow him or her to do so without intruding upon or unduly harassing the resident. Consequently, the discomfort to which the Court must refer is merely that of knowing there is a person outside who disagrees with someone inside. This may indeed be uncomfortable, but it does not implicate the town's interest in residential privacy and therefore does not warrant silencing speech.

A valid time, place, or manner law neutrally regulates speech only to the extent necessary to achieve a substantial governmental interest, and no further. Because the Court is unwilling to examine the Brookfield ordinance in light of the precise governmental interest at issue, it condones a law that suppresses substantially more speech than is necessary. I dissent.

## Footnotes

Footnote 1 The Court today soundly rejects the town's rogue argument that residential streets are something less than public fora. Ante, at 479-481. I wholeheartedly agree with this portion of the Court's opinion.

Footnote 2 The Court relies on our "two-court rule" to avoid appellees' argument that state law creates a labor picketing exception to the Brookfield ordinance, and thus that the law is not content neutral. Ante, at 481-482. However, I would not be as quick to apply the rule here. The District Court's opinion focuses solely on the language and history of the town ordinance and does not refer to state law, 619 F. Supp. 792, 796 (ED Wis. 1985); the panel simply deferred to the District Court; and the en banc court issued no opinion. I cannot find even one court, let alone two, that has clearly passed on appellees' argument. Cf. Virginia v. American Booksellers Assn., 484 U.S. 383, 395 (1988). However, nothing in the Court's opinion forecloses consideration of this question on remand.

Footnote 3 Like JUSTICE WHITE, I am wary of the Court's rather strained "single-residence" construction of the ordinance. Moreover, I give little weight to the town attorney's interpretation of the law; his legal interpretations do not bind the state courts, and therefore they cannot bind us. American Booksellers, supra, at 395. However, for purposes of this dissent, I will accept the Court's reading.

JUSTICE STEVENS, dissenting.

"GET WELL CHARLIE - OUR TEAM NEEDS YOU."

In Brookfield, Wisconsin, it is unlawful for a fifth grader to carry such a sign in front of a residence for the period of time necessary to convey its friendly message to its intended audience.

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The Court's analysis of the question whether Brookfield's ban on picketing is constitutional begins with an acknowledgment that the ordinance "operates at the core of the First Amendment," ante, at 479, and that the streets of Brookfield are a "traditional public forum," ante, at 480. It concludes, however, that the total ban on residential picketing is "narrowly tailored" to protect "only unwilling recipients of the communications." Ante, at 485. The plain language of the ordinance, however, applies to communications to willing and indifferent recipients as well as to the unwilling.

I do not believe we advance the inquiry by rejecting what JUSTICE BRENNAN calls the "rogue argument that residential streets are something less than public fora," ante, at 492, n. 1. See Cornelius v. NAACP Legal Defense & Educational Fund, Inc., 473 U.S. 788, 833 (1985) (STEVENS, J., dissenting). The streets in a residential neighborhood that has no sidewalks are quite obviously a different type of forum than a stadium or a public park. Attaching the label "public forum" to the area in front of a single family dwelling does not help us decide whether the town's interest in the safe and efficient flow of traffic or its interest in protecting the privacy of its citizens justifies denying picketers the right to march up and down the streets at will.

Two characteristics of picketing - and of speech more generally - make this a difficult case. First, it is important to recognize that, "[l]ike so many other kinds of expression, picketing is a mixture of conduct and communication." NLRB v. Retail Store Employees, 447 U.S. 607, 618-619 (1980) (STEVENS, J., concurring in part and concurring in result). If we put the speech element to one side, I should think it perfectly clear that the town could prohibit pedestrians from loitering in front of a residence. On the other hand, it seems equally clear that a sign carrier has a right to march past a residence - and presumably pause long enough to give the occupants an opportunity to read his or her message - regardless of whether the reader agrees, disagrees, or is simply

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indifferent to the point of view being expressed. Second, it bears emphasis that:

> "[A] communication may be offensive in two different ways. Independently of the message the speaker intends to convey, the form of his communication may be offensive - perhaps because it is too loud or too ugly in a particular setting. Other speeches, even though elegantly phrased in dulcet tones, are offensive simply because the listener disagrees with the speaker's message." Consolidated Edison Co. v. Public Service Comm'n of New York, 447 U.S. 530, 546-547 (STEVENS, J., concurring in judgment) (footnotes omitted).

Picketing is a form of speech that, by virtue of its repetition of message and often hostile presentation, may be disruptive of an environment irrespective of the substantive message conveyed.

The picketing that gave rise to the ordinance enacted in this case was obviously intended to do more than convey a message of opposition to the character of the doctor's practice; it was intended to cause him and his family substantial psychological distress. As the record reveals, the picketers' message was repeatedly redelivered by a relatively large group - in essence, increasing the volume and intrusiveness of the same message with each repeated assertion, cf. Kovacs v. Cooper, 336 U.S. 77 (1949). As is often the function of picketing, during the periods of protest the doctor's home was held under a virtual siege. I do not believe that picketing for the sole purpose of imposing psychological harm on a family in the shelter of their home is constitutionally protected. I do believe, however, that the picketers have a right to communicate their strong opposition to abortion to the doctor, but after they have had a fair opportunity to communicate that message, I see little justification for allowing them to remain in front of his home and repeat it over and over again simply to harm the doctor and his family. Thus, I

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agree that the ordinance may be constitutionally applied to the kind of picketing that gave rise to its enactment.

On the other hand, the ordinance is unquestionably "overbroad" in that it prohibits some communication that is protected by the First Amendment. The question, then, is whether to apply the overbreadth doctrine's "strong medicine," see Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973), or to put that approach aside "and await further developments," see ante, at 491 (WHITE, J., concurring in judgment). In Broadrick, the Court framed the inquiry thusly:

> "To put the matter another way, particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." 413 U.S., at 615.

In this case the overbreadth is unquestionably "real." Whether or not it is "substantial" in relation to the "plainly legitimate sweep" of the ordinance is a more difficult question. My hunch is that the town will probably not enforce its ban against friendly, innocuous, or even brief unfriendly picketing, and that the Court may be right in concluding that its legitimate sweep makes its overbreadth insubstantial. But there are two countervailing considerations that are persuasive to me. The scope of the ordinance gives the town officials far too much discretion in making enforcement decisions; while we sit by and await further developments, potential picketers must act at their peril. Second, it is a simple matter for the town to amend its ordinance and to limit the ban to conduct that unreasonably interferes with the privacy of the home and does not serve a reasonable communicative purpose. Accordingly, I respectfully dissent.

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# AGENDA ITEM

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: CAROL W. LYNCH**

**CC: CAROLYN LEHR, CITY MANAGER**

**DATE: MAY 15, 2007**

**SUBJECT: PROPOSED ORDINANCE TO ADDRESS TARGETED RESIDENTIAL PICKETING**

Draft Targeted Residential Picketing Ordinance

## RECOMMENDATION

Read Ordinance No. ___ "AN ORDINANCE OF THE CITY OF RANCHO PALOS VERDES AMENDING TITLE 9 OF THE RANCHO PALOS VERDES MUNICIPAL CODE TO ADD REGULATIONS GOVERNING PICKETING IN RESIDENTIAL ZONES IN THE CITY" by title only, waive further reading, and introduce the ordinance.

## EXECUTIVE SUMMARY

From time to time targeted residential picketing has occurred in the City and residents have raised concerns and inquired whether there is anything the City can do to help them with this issue. Based upon case authority, picketers in residential areas have First Amendment rights to express their opinion, even anonymously. However, narrow ordinances that prohibit picketers from making targeted residents a "captive audience" have been upheld. The proposed ordinance has been modeled upon one ordinance that withstood challenge before the California Court of Appeal. Additionally, the courts have recognized a city's authority to restrict loud and raucous noise.

By establishing a 300-foot "buffer zone," the ordinance creates a minimum zone of protection for residents from unwanted harassment and intimidation, but does not prevent picketers from disseminating their message to the general public or to local residents from a lawful distance. The ordinance balances the interests of the picketers' First Amendment speech with the interests of residents who have a right to privacy in their own homes. It also leaves open ample alternative channels of communication for the picketers.

## DISCUSSION

To pass constitutional muster, an ordinance like the one under consideration here that potentially regulates the time, place and manner of speech must be content neutral and

"narrowly tailored" to achieve a specific governmental purpose. Further, the ordinance must leave open alternative channels of communication. Both aspects of the ordinance presented to you – the 300-foot buffer zone and the noise prohibition – should pass those tests. The proposed ordinance would apply to all residential picketers or harassing noisemakers. The proposed ordinance would be aimed only at reducing or eliminating harassment and intimidation of individuals in their own residences. Finally, the proposed ordinance does not regulate any more speech than necessary to protect individuals in their homes. The picketers are left with ample alternatives for disseminating their message to the public.

A. 300-Foot Buffer Zone

A complete ban on certain kinds of targeted residential picketing has been specifically held to be constitutional by the United States Supreme Court and the California Court of Appeal. In 1988, the United States Supreme Court upheld an ordinance that prohibited picketing at or about the residence of any individual. Frisby v. Shultz, 487 U.S. 474 (1988). In 1993, the City of San Jose adopted a an ordinance containing a 300-foot "buffer zone." The California Court of Appeal upheld the targeted residential picketing ban and the "buffer zone" against various challenges in City of San Jose v. Superior Ct., 32 Cal.App.4th 330 (1995). Sections 9.32.020 and 9.32.030 in the proposed ordinance are modeled on the San Jose ordinance.

Case law on this issue continues to evolve. While one federal district court commented in dicta that 300-feet may provide too large of a buffer zone, the court did not overturn the County of San Diego's ordinance which provided a 300-foot buffer zone for targeted residential picketing. Klein v. San Diego Co., 463 F.3d 1029 (2006). Instead, the court upheld it as applied to the facts in that case. As indicated under "Options" below, the City Council could adopt a smaller buffer zone.

B. Loud and Raucous Noise

The United States Supreme Court has also recognized that the government has a substantial interest in protecting its citizens from unwelcome noise. "This interest is perhaps at its greatest when government seeks to protect the well-being, tranquility, and privacy of the home." Ward v. Rock Against Racism, 491 U.S. 781, 796 (1989) (internal quotations omitted). The United States Supreme Court has also held that municipalities may forbid "loud and raucous" noise. Kovacs v. Cooper, 336 U.S. 77, 87 (1949).

Section 9.32.040 of the proposed ordinance makes it illegal to make loud and raucous noise directed at a residence with the intent to harass the inhabitants of that residence. Much like the City's existing ordinance that prohibits loitering with the intent to publicize a criminal street gang's dominance over certain territory in order to intimidate non-members of the gang, this addition to the Municipal Code would prohibit the making of unreasonable noise which is intended to harass, threaten or intimidate a resident. We are not aware of any case that specifically upholds this approach, however, we believe this approach complies with the legal standards listed above in that it is targeted at the intent and effect of the noise, not its content. Further, it prohibits only the noise the courts have already found to be offensive and not protected, and would allow picketers to make unreasonable noise at other types of locations.

CONCLUSION

If the City Council concurs with Staff's recommendation, the City Council should read the attached Targeted Residential Picketing Ordinance by title only, waive further reading, and introduce the Ordinance.

OPTIONS

The City Council could adopt the Ordinance as drafted;

- The City Council could adopt the Ordinance with a shorter distance requirement of 200-feet or 100-feet;

- The City Council could give Staff additional direction about these issues, which could be incorporated into a revised ordinance; or

- The City Council could decline to adopt the ordinance.

Respectfully submitted,
Carol Lynch, City Attorney

Reviewed by,
Carolyn Lehr, City Manager

Attachments:

Draft Targeted Residential Picketing Ordinance

ORDINANCE NO. 2007-____

AN ORDINANCE OF THE CITY OF RANCHO PALOS VERDES AMENDING TITLE 9 OF THE RANCHO PALOS VERDES MUNICIPAL CODE TO ADD REGULATIONS GOVERNING PICKETING IN RESIDENTIAL ZONES IN THE CITY.

WHEREAS, residential picketing that is targeted at a particular residence is a phenomenon that is harmful to the public health, safety and welfare, and must be limited; and

WHEREAS, picketing at or near the borders of a private residence, directed at the inhabitants of the residence is a disfavored activity that is not entitled to a high level of First Amendment protection, according to decisions by State and Federal courts; and

WHEREAS, unreasonably noisy picketing at or near the borders of a private residence, using noise directed at the inhabitants of the residence for the purpose of threatening and harassing such inhabitants, is a disfavored activity that is not entitled to a high level of First Amendment protection, according to decisions by State and Federal courts; and

WHEREAS, picketing that is directed at particular individual homes and picketing that is unreasonably noisy and is intended to harass and intimidate the occupants, are inherently and unreasonably offensive to and intrusive upon the right to privacy in one's

home; and

WHEREAS, a 300-foot "buffer zone" as established herein, creates a minimum zone of protection for residents from unwanted harassment and intimidation, but does not prevent picketers from disseminating their message to the general public or to local residents, from a lawful distance; and

WHEREAS, in adopting this ordinance, it is the intent of the City Council to protect what the courts have called the "captive audience" inside the targeted homes; however, the City Council does not intend to stifle any speech that is protected by the First Amendment; and

WHEREAS, the prohibitions and buffer zones adopted herein leave open ample alternative avenues for communicating messages and ideas by those who wish to picket or protest in the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 9 of the Rancho Palos Verdes Municipal Code is hereby amended by adding new Chapter 9.32, entitled "Residential Picketing," thereto, to read as follows:

"9.32 Residential Picketing

"9.32.020 Definitions.

The following words and phrases, whenever used in this Chapter shall be construed as defined in this Section, except where the context clearly requires otherwise:

A. The term "residential dwelling" shall mean any permanent building being used by its occupants solely for non-transient residential uses.

B. The phrase "picketing activity that is targeted at" shall mean picketing activity that is targeted at a particular residential dwelling and proceeds on a definite course or route in front of or around that particular residential dwelling.

"9.32.030 Targeted Residential Picketing Prohibited.

A. No person shall engage in picketing activity that is targeted at and is within three hundred feet of a residential dwelling.

B. This chapter does not and shall not be interpreted to preclude picketing in a residential area that is not targeted at a particular residential dwelling.

"9.32.040 Loud and Raucous Noise Prohibited.

No person shall willfully make or cause to be made any loud and raucous noise at or within 300 feet of any residence in the City which is intended to harass, threaten or intimidate any person living therein.

"9.32.050 Remedies Not Exclusive.

The remedies provided by this Chapter are in addition to any other legal or equitable remedies any aggrieved person may have and are not intended to be exclusive.

"9.32.060 Violation.

A violation of this Chapter is punishable pursuant to Section 1.08.010 of the Municipal Code."

SECTION 2. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 3. The City Clerk is directed to certify to the enactment of this Ordinance and to cause this Ordinance to be posted as required by law.

SECTION 4. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

PASSED, APPROVED AND ADOPTED THIS 15th DAY OF MAY 2007.

_____

Mayor

Attest:

_____

City Clerk

State of California )

County of Los Angeles ) ss

City of Rancho Palos Verdes )

I, Carla Morreale, City Clerk of the City of Rancho Palos Verdes, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Ordinance No. ___ passed first reading on May 15, 2007, was duly and regularly adopted by the City Council of said City at a regular meeting thereof held on _____, and that the same was passed and adopted by the following roll call vote:

_____

**COUNCIL TRANSMITTAL**

**TO:** Lynn Creswell **DATE:** April 30, 2007
Chief Administrative Officer

**FROM:** Sam Guevara, Chief of Staff

**SUBJECT:** TARGETED RESIDENTIAL PICKETING ORDINANCE

**STAFF CONTACT:** Sam Guevara, 535-7732

**DOCUMENT TYPE:** Ordinance

**BACKGROUND/DISCUSSION:** Residents of Salt Lake City have recently experienced residential picketing targeted at specific homes. Such targeted residential picketing infringes on the residents' right to live in a neighborhood of harmony and solitude.

The public health and welfare and the good order of the community require that citizens enjoy, in their homes and neighborhoods, a feeling of well-being, tranquility, and privacy, and enjoy freedom from being a captive audience to unwanted speech in their homes.

The practice of targeted picketing in residential areas causes emotional disturbance and distress to residents, and has the potential to incite breaches of the peace.

Individuals have the opportunity to exercise their rights of free speech without resorting to targeted residential picketing. The purpose of this ordinance is to protect the significant public interests stated above; not to suppress free speech rights or any particular viewpoint.

**RECOMMENDATION:** It is recommended that the City Council adopt the attached ordinance enacting Section 11.12.120 prohibiting targeted residential picketing.

SALT LAKE CITY ORDINANCE
No. _____ of 2007
(Targeted Residential Picketing)

AN ORDINANCE ENACTING SECTION 11.12.120, *SALT LAKE CITY CODE*, RELATING TO TARGETED RESIDENTIAL PICKETING.

WHEREAS, the City Council has learned that residents of Salt Lake City have experienced residential picketing targeted at specific residences; and

WHEREAS, such targeted residential picketing infringes on the residents' right to neighborhood tranquility and privacy, and freedom from being a captive audience to unwanted messages while in their homes, and adversely affects other governmental interests; and

WHEREAS, in *Frisby v. Shultz*, 487 U.S. 474 (1988), the United States Supreme Court upheld a municipal ordinance that banned picketing in front of a particular residence to protect residential privacy and to protect the inhabitants from hearing or seeing unwanted messages; and

WHEREAS, the City Council finds that prohibiting targeted picketing within 100 feet of a particular residence properly balances two competing interests: (1) the right of residents to residential privacy and to be free from being a captive audience to unwanted speech in their homes, and (2) the constitutional right of the picketers to have reasonable access to their intended audience;

WHEREAS, the City Council finds that the proposed ordinance is in the best interest of the City to protect the public peace, health, safety, tranquility, privacy, and welfare; and

WHEREAS, the proposed ordinance is intended to be a content-neutral time, place, and manner regulation on speech in public forums;

Now, Therefore, be it ordained by the City Council of Salt Lake City, Utah, as follows:

SECTION 1. Section 11.12.120, *Salt Lake City Code* be, and the same hereby is, enacted to read as follows:

**11.12.120 Targeted Residential Picketing Prohibited:**

**A. Purpose**: The protection of the home is of the highest importance. The public health and welfare and the good order of the community require that citizens enjoy in their homes and neighborhoods a feeling of well-being, tranquility, and privacy, and enjoy freedom from being a captive audience to unwanted speech in their homes. The practice of targeted picketing in residential areas causes emotional disturbance and distress to residents, and has the potential to incite breaches of the peace. Full opportunity exists for individuals to exercise their rights of free speech without resorting to targeted residential picketing. The provisions of this section are enacted for the purpose of protecting the significant public interests stated above and not to suppress free speech rights or any particular viewpoint.

**B. Definitions:**

1. "Picketing" means the stationing or posting of one or more persons to apprise the public, vocally or by standing or marching with signs, banners, sound amplification devices, or other means, of an opinion or a message.

2. "Residence" means any single-family, duplex, or multi-family dwelling that is not used as a targeted occupant's sole place of business or as a place of public meeting.

3. "Targeted residential picketing" means picketing that (a) is specifically directed or focused towards a residence, or one or more occupants of a residence, and (b) takes place within 100 feet of the property line of that residence.

**C. Prohibition:**

It shall be unlawful for any person, acting alone or in concert with others, to engage in targeted residential picketing in Salt Lake City.

**D. Penalty for Violations:**

Any violation of this ordinance is a class B misdemeanor.

SECTION 2. This ordinance shall take effect immediately upon the date of its first publication.

Passed by the City Council of Salt Lake City, Utah this _____ day of _____, 2007.

_____
CHAIRPERSON

ATTEST:

_____
CHIEF DEPUTY CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____Approved. _____Vetoed.

_____
MAYOR

ATTEST:

_____
CHIEF DEPUTY CITY RECORDER

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date 4-27-07
By Boyd Ferguson

(SEAL)

Bill No. _____ of 2007.
Published: _____.

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